THE ROLE OF THE PLANNER AS A MEDIATOR IN RESOLVING LOCAL ZONING DISPUTES: A CASE STUDY AND OVERVIEW OF POSSIBLE APPLICATIONS

by

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B.A., Bethel College, 1981

A MASTER'S REPORT

submitted in partial fulfillment of the

requirements for the degree

MASTER OF REGIONAL AND COMMUNITY PLANNING

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KANSAS STATE UNIVERSITY
Manhattan, Kansas

1989

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ACKNOWLEDGEMENTS

I would like to acknowledge all of those persons who provided the motivation for this project by instilling in me a firm belief in peacemaking and conflict resolution, particularly: my parents, Norman and Nadine Wedel; my professors at Bethel College; and the Mennonite Church as a whole.

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INTRODUCTION

Conflict is an everpresent and inevitable part of our world. The potential for conflict exists at all levels of human relations, interpersonal, community and international, and touches every facet of our everyday existence including our home and work environments. When conflict between two or more parties becomes visibly manifest, it is termed a dispute.

There are a variety of ways individuals and societies attempt to settle disputes. Violence or threat of violence, litigation, negotiation and arbitration are all methods of settling disputes. The threat of violent confrontation or costly litigation to resolve a dispute has resulted in a pervasive fear in our society of conflict in general (Pnueman and Bruehl 1982). Conflict is often viewed negatively and as something to be avoided or eliminated if possible.

Conflict in and of itself, however, should not be viewed as being either good or bad. Conflict is simply an inevitable part of our world with which we must learn to deal effectively. As Bercovitch (1984) emphasizes:

> "When dealt with appropriately, it [conflict] may lead to progress and creation. If most people in conflict possessed the desire, as well as the skills and ability, to deal with their conflicts appropriately, more amicable agreements could be

> achieved.... If we only knew more about conflict management, more conflicts could be managed peacefully and effectively." (p. xi)

There are numerous professions in which such conflict management skills and abilities could be effectively and constructively utilized. The planning profession is certainly one which presents such a challenge. Indeed, there are few issues which have more potential for generating conflict and disputes at the local government level than zoning and land use regulations. Controversy over the use of a specific parcel of land, and how that use may affect surrounding properties or the community as a whole, can often escalate into a clear dispute between two or more parties.

The planner, charged with administration of the zoning regulations and the plans upon which the zoning is based, is inexorably caught up in the midst of such disputes. This presents the planner with a number of possible roles which he or she could play in resolving the specific dispute. One possible role is that of a mediator, a more or less neutral third party who can facilitate or assist the disputing parties in reaching a mutually satisfactory arrangement. Such an arrangement is often termed a "win-win" solution.

The purpose of this report is to examine the role of the planner as a mediator and as a facilitator of

"win-win" solutions in local zoning disputes. Mediation skills, abilities and techniques as suggested by the mediation profession, will be examined and applied to the local planning level. The report is not meant to be an exhaustive analysis of mediation, but is an attempt to provide an overview of possible applications of mediation to the planning field, and to stimulate further interest in the study and utilization of mediation in the planning profession.

To provide a workable framework for analysis, the scope of the study will be limited to examining primarily dispute situations between developers and opposition groups in local zoning matters. The introductory chapter will define mediation and clarify the unique role of the planner in zoning dispute resolution. Chapter Two of the report will focus on specific mediation skills, abilities, methods and techniques which could be utilized by the planner. These will be primarily adapted from the experience of professionals in the environmental mediation field.

The third chapter will discuss various regulatory zoning devices which provide the necessary legal framework for mediation to occur. Particular attention will be given to those alternatives which can provide for a win-win solution to a zoning dispute. The report will

conclude with a case study analysis of a local zoning dispute and how mediation skills and techniques could have been utilized to possibly prevent litigation of the issue.

CHAPTER ONE

THE MEDIATION ROLE IN PLANNING

Mediation Defined

A clear understanding of the mediation role in planning necessitates first of all a clear definition of mediation as the term will be utilized in this report. A strict definition of the term would be: intervention by a neutral third party as an intermediary between disputing parties or viewpoints to promote reconciliation, settlement or compromise. In a slightly different view, Folberg and Taylor (1986) emphasize mediation as a "self-empowering process." (p. 8) They suggest that in mediation it is

> "the participants, together with the assistance of a neutral person or persons, who systematically isolate the disputed issues in order to develop options, consider alternatives, and reach a consensual settlement that will accomodate their needs. Mediation is a process that emphasizes the participants' own responsibility for making decisions that affect their lives." (p. 7-8)

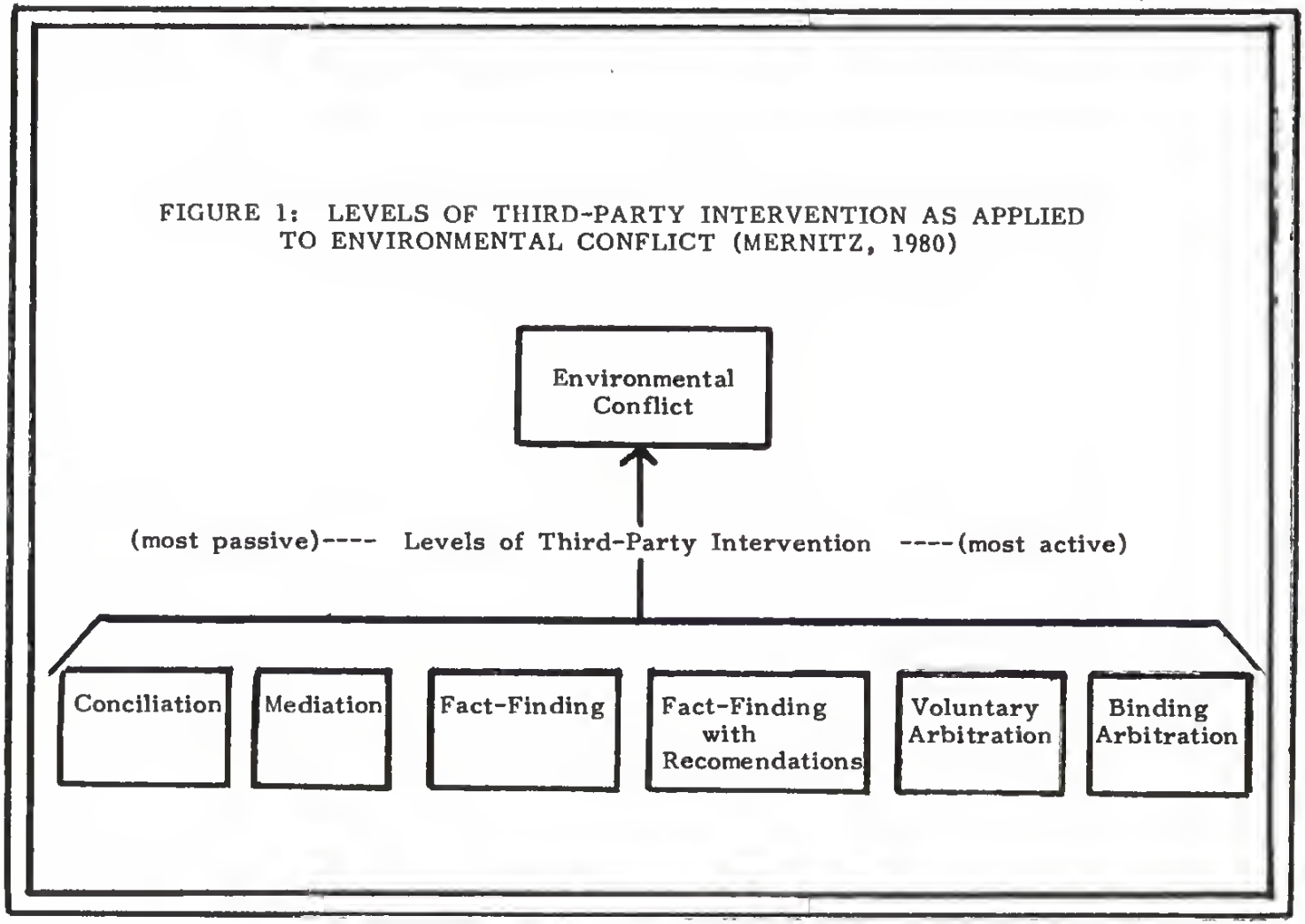
Although these two definitions serve to clarify the mediation role, they are both somewhat limited and narrow in scope for the purposes of this report. Perhaps a more useful way of viewing mediation is by comparing it with other forms of third-party intervention. Mernitz (1980) examines the various forms of intervention as applied to

environmental conflicts using a continuum as illustrated in Figure 1. He characterizes the role of conciliation, which is the mildest form of intervention, as that of the "good guy" who tries to make things run smoothly and keep the parties talking. Planners often find themselves playing this kind of a role simply out of necessity.

Mediation, as described by Mernitz (1980), is slightly more aggressive than conciliation. The mediator may make suggestions or procedural recommendations, but does not have the necessary power or authority to impose a settlement to the dispute. Fact-finding and fact-finding with recommendations are slight variations. In fact-finding, the way to settlement is made clear by the intervenor's masterful analysis and skillful presentation of statistics, arguments, and contentions. In fact-finding with recommendations, a specific recipe for settlement is also presented in addition to the analysis (Mernitz 1980).

Voluntary and binding arbitration are forms of intervention in which the authority or power to settle the dispute lies with the intervenor and not with the participants. Voluntary arbitration is agreed to by both parties involved while binding arbitration, as used by Mernitz (1980) denotes that the arbitration itself has

FIGURE 1: LEVELS OF THIRD-PARTY INTERVENTION AS APPLIED TO ENVIRONMENTAL CONFLICT (MERNITZ, 1980)



been mandated by a court or other authority, as in a labor strike situation.

Arbitration is not normally utilized in connection with local zoning disputes, although the role of the zoning hearings examiner would be similar to an arbitration-type decision. The usual role of the planner more closely resembles the conciliation, mediation, fact-finding and fact-finding with recommendations positions. The planner never makes the final decision on zoning disputes, but is often called upon to submit recommendations and to facilitate the decision-making process.

Therefore, the term mediation for the purposes of this report shall be viewed in its broadest sense and shall include the various forms of intervention from conciliation through fact-finding with recommendations. A summary definition which is most appropriate is expressed by Bercovitch (1984):

> "At the broadest level the objective of third-party intervention may thus be viewed as facilitative - to facilitate communication, exploration, and problem-solving." (p. 25)

The mediation role of the planner should therefore be viewed as one of facilitation of dispute resolution. This could be accomplished through a more passive or more

active position depending on the specific dispute and the parties involved.

Clarifying the Role of the Planner

Although mediation has been defined as facilitation of dispute settlement by a third party through a variety of possible intervention forms, it must be further clarified how such a role fits with the unique position of the local planner. The planner's role cannot be that of a mediator in the truest sense of the word, i.e. a neutral third party. By the very nature of the position, the planner will always be somewhat biased and is indeed expected to be in certain situations.

For example, the planner is generally a part of the community in which he or she works and therefore may have a personal interest in a given zoning matter. Also, the planner is expected to be an advocate for the general health, safety and welfare of the community, i.e. to protect the public interest. This may necessitate taking the position of an actual negotiating party in a zoning dispute situation which may preclude the ability to maintain a mediating role. In this same vein, the planner is also accountable to the governing body who provides the job and therefore, must advocate positions which are in their interests as well.

Granted, the degree of bias will vary considerably from zoning case to zoning case and with each individual planner and his or her position. Planners and positions can vary in a continuum from pure technician planners to strong advocate planners. The important point to remember is that even professional mediators themselves are not totally unbiased and will vary in personal style from more passive to more aggressive (Raiffa 1982). They may also vary their approach or style depending on the given dispute situation.

Although the planner may not be able to play the role of a mediator in the truest sense, there is certainly much that can be done to facilitate resolution of zoning disputes between parties. Schon (1983) describes a possible intermediary role where the planner is placed between those who propose and those who dispose. He suggests that this role carries inherent potentials for conflict, but that each individual planner has considerable latitude in choosing how to frame the role. For example, one can choose to play the role more privately or bring the negotiation to the public view. Each would have certain consequences for both the planner's ability to detect crucial errors and to influence the scope and direction of the process.

Similarly, Susskind and Weinstein (1980) call for planners to play a mediating role by drawing upon the long-time experience of the profession with bargaining and negotiation in public participation programs. They contend that planners have always played the role of facilitating decision-making by bringing together, through the public hearing process, all the crucial participants in the matter and by providing an examination of the various alternatives and/or outcomes of any decisions.

Although the planner may not be able to play the role of a "true mediator," it is obvious that much can be done to facilitate agreements which are more satisfactory or beneficial to the parties involved. This study will therefore focus on techniques and processes which provide for or enhance this kind of facilitating role.

Why Mediation in Zoning Disputes?

Before proceeding to a discussion of mediation skills and techniques, it may be helpful to briefly outline why mediation is important and should be considered in zoning dispute situations. The advantages of the planner acting as mediator in local zoning dispute situations can be substantial.

Lake (1980) emphasizes that the advantage of mediation is that it can turn a basically adversarial

process into a consensual process and can shift procedures from judicial to administrative. Folberg and Taylor (1984) expound on this idea by further stating that a consensual process can educate participants regarding the needs of others and create a personalized model for resolving future disputes. Through the process people can learn to work together, concentrate on the issues and make positive gains through cooperation.

It is also generally agreed that litigation is not the preferred method of dispute resolution (see Folberg and Taylor 1984; Lake 1980; Rivkin 1977; Sullivan 1984). Litigation is expensive for all parties involved. By its very nature, litigation tends to lead to rigidity and inflexibility. Both sides of an issue must argue and defend their positions and generally a choice must be made and a judgment imposed. By this method one side wins and the other loses.

Rivkin (1977) eloquently sums up the advantages of mediation in this regard:

> "Mediation does not squeeze multi-faceted problems into a courtroom where adversaries argue their own view. Rather, it establishes a single forum in which many divergent interests, each initially accepted as legitimate, participate in seeking consensus."

He further states that he believes that mediation could play a major role in resolving environmental disputes, especially those involving the use of land.

Another advantage of mediation may be the reduced time involved in reaching resolution of a dispute. However, Amy (1987) cautions that mediation should be viewed realistically and that some of the claims concerning the benefits of mediation may be overstated. Mediation may in fact have the effect of lengthening a decision-making process and thereby result in a more costly alternative. Perhaps even more important, mediation may have the effect of coopting a group into an agreement that may not be in their best interests. Amy (1987) cites numerous examples of environmental disputes where this may have occurred.

Because of their strategic position in the decision-making process, planners must be particularly sensitive to how the zoning administrative process may be coopting groups or individuals rather than truly reaching mutually satisfactory agreements. Nevertheless, there seems to be a general consensus that mediation can bring people together in a positive process, especially at the local level. Amy (1987) terms it "the advantages of informality" in such a process. Further, highly localized disputes would probably be resolved better by the parties directly involved rather than by judicial or legislative authorities imposing a solution (Susskind 1980).

In summary, mediation is important because it can, in most instances, avoid the costly adversarial process of litigation or threat of litigation, and at the same time can educate, foster cooperation and generally give involved parties a greater sense of participating ownership in the entire planning and zoning process. This should, over a long term, create more public support for a local planning program.

CHAPTER TWO

MEDIATION SKILLS AND TECHNIQUES APPLICABLE TO LOCAL ZONING ADMINISTRATION

Review of the Literature

A review of the relevant material dealing with mediation of local zoning disputes yielded relatively little information. Practically nothing is available which covers precisely the planner's role in local zoning dispute resolution. A fair amount of resource material is currently available concerning the emerging field of environmental mediation and a considerable amount is available on the general field of professional mediation and conflict resolution.

It should be emphasized that the practice of conflict resolution, and mediation in particular, is in many respects in infant stages. Only very recently has the subject of mediation been studied in a systematic fashion (Bercovitch 1984). Therefore, it is not surprising that little has been written which links mediation directly to the planning profession.

Nevertheless, there appears to be much in the field of professional mediation, and environmental mediation in particular, which could be utilized by and adapted to the

planning field. Consequently, the primary emphasis of this chapter will be on examining possible applications to local planning from the environmental mediation field.

Environmental Mediation and Local Zoning Disputes

Environmental mediation can be broadly defined as a process of intervention into and resolution of a site-specific dispute over issues of resource use and allocation; e.g. concerns over land use; facilities siting; pollution control; the depletion of non-renewable resources and the management of renewable resources (Lake 1980). Disputes regarding local zoning matters would certainly fit within this broad definition.

Environmental mediation is different than other forms of mediation; e.g. labor-management mediation, divorce or custody mediation, etc. Susskind and Weinstein (1980) describe some of these as follows:

1. Irreversible ecological effects may be involved in environmental disputes;
2. The nature, boundaries, participants and costs involved in environmental disputes are often indeterminate;
3. One or more of the parties to most environmental disputes often claim to represent the broader public interest (including the interest of

inanimate objects, wildlife and generations yet unborn); and

4. Implementation of private agreements is difficult in environmental disputes.

Figure 2 on the following page elaborates further on the differences between environmental disputes and other types of disputes.

The planner, desiring to play a mediatory role in a local zoning dispute, must understand how these disputes are different from other types of disputes before attempting to apply techniques from other areas of mediation experience.

Mediation Skills/Abilities Applicable to Planning

The skills and abilities useful in mediation are difficult to concretize since mediators differ widely in style and degree of effectiveness. However, knowing what seems to make a good mediator should help the planner better understand how he or she could mediate a dispute situation.

Sullivan (1984) identifies ten areas which are commonly used by participants in mediation to assess a mediator's performance:

1. Originality of ideas;
2. A sense of appropriate humor;

FIGURE 2: COMPARISON OF LABOR, COMMUNITY AND ENVIRONMENTAL DISPUTES

DISPUTE COMPONENTS	DISPUTE TYPES			
		Labor	Community	Environmental
	Setting	Well defined. Although national implications of settlement may be difficult to perceive.	Usually well defined, but again, implications of settlement may be difficult to perceive at national level.	Often not well defined because of varying scales of conflict, settlement and influence.
	Parties	Well defined.	Usually well defined, but weaker may need definition (e.g., groups of reuters); endorsed representatives may be difficult to locate.	Usually not well defined; representatives of certain groups may be difficult to identify.
	Power of Parties	Well defined from past practices	One side may be well defined; mediator/advocate may have to provide educational or organizational function for other.	Same as community disputes.
	Issues	Well defined and narrow; concern only employment relations.	Usually well defined; lack of definition including externalities.	May be complex, involving externalities, economic factors and varying geographic areas; need definition and clarification in most cases.
	Outcomes and their Effects	Generally predictable (new contract or strike); sometimes a far-reaching impact.	Changes may be clear, but often have indirect impacts.	Much redistibution can occur in resources, income, or power; outcome may produce confusing results.

Note: Taken from Mernitz (1980)

3. Ability to act unobtrusively;
4. The mediator as one of us;
5. The mediator as a respected authority;
6. Willingness to be a vigorous salesman when the situation requires it;
7. Control over feelings;
8. Attitudes towards and persistence and patient effort invested in the work of mediation;
9. Ability to understand quickly the complexities of a dispute; and
10. Accumulated knowledge of the subject being mediated.

On the lighter side, Simkin (1971) lists the following qualities which a mediator should possess:

1. the patience of Job;
2. the sincerity and bulldog characteristics of the English;
3. the wit of the Irish;
4. the physical endurance of a marathon runner;
5. the broken-field dodging abilities of a halfback;
6. the guile of Machiavelli;
7. the personality-probing skills of a good psychiatrist;
8. the confidence-retaining characteristics of a mute;

9. the hide of a rhinoceros; and
10. the wisdom of Solomon.

And more seriously:

11. demonstrated integrity and impartiality;
12. basic knowledge and belief in the collective bargaining process;
13. firm faith in volunteerism in contrast to dictation;
14. fundamental belief in human values and potentials, tempered by the ability to assess personal weaknesses as well as strengths;
15. hard-nosed ability to analyze what is available in contrast to what may be desirable; and
16. sufficient personal desire and ego, qualified by a willingness to be self-effacing.

In examining specifically the skills planners need, Forester (1987) points to "careful listener" as a very important attribute. The mediator-planner must be able to hear a point, understand it (whether they agree with it or not), and then verbalize a clear response. It is very important to have openness and not offend people. Planners in mediating roles must also have a good sense of timing. One must stay cool, stay on the issue, and not respond or answer before it's appropriate.

Mediation Strategies in Planning

Forester (1987) outlines six ways or strategies for mediating local land-use conflicts.

Strategy One: The facts! The rules. (The planner as regulator). In this strategy, the planner is merely a fact-finder, a technician and bureaucrat. The planner in this role merely processes information and someone else takes responsibility for the decisions.

Strategy Two: Premediate and negotiate - representing concerns. The planner in this role attempts to temper recommendations given to a developer based on neighborhood concerns. The planner anticipates the concerns of the interested community members and seeks to represent their interests without neighborhood representatives.

Strategy Three: Let them meet - the planner as a resource. This strategy assumes a more active role in soliciting neighborhood input. The developer is encouraged to meet with neighborhood representatives to discuss problems. However, the planner in this role tries to remain "neutral" and acts primarily as a referee in a boxing match.

Strategy Four: Perform shuttle diplomacy - probe and advise both sides. Instead of face to face discussions, this strategy employs back and forth negotiations with the

planner as the primary go-between. The planner attempts to place the neighbor's concerns on the table and to convince the developer to deal with them. The planner also influences the process by possibly making suggestions to both sides as the process unfolds.

Strategy Five: Active and interested mediation - thriving as a nonneutral. Here the planner is central in bringing all sides together, actively soliciting input and searching for compromise solutions and mutual gain. Such an active role requires tremendous patience and tolerance. Trust through an on-going relationship with the community is vital and distinguishes the planner as mediator from an outside independent mediator.

Strategy Six: Split the job - you mediate, I'll negotiate. This final strategy employs face-to-face mediation with the planner at the table - but as negotiator or advisor, not as mediator. This strategy is useful when the professional and political mandate of the position is such that the planner cannot imagine a role as a neutral convenor or mediator of neighborhood-developer negotiations. In this case, the planner remains interested in the substance of the negotiations while the mediating role itself may be taken over by another party, either professional or ad hoc, volunteer mediator.

The Mediation Process

To further illuminate the skills and abilities necessary in mediating zoning disputes, it may be helpful to examine the mediation process itself and then apply it to a planning situation. Folberg (1984) outlines the mediation process using seven stages:

Stage One: Introduction - Creating Structure and Trust. Unlike many dispute situations where the mediator is selected by referral or direct choice, the planner may be faced with a mediatory position simply due to the nature of the circumstances. Likewise, trust is something that may not need to be established. Depending on past experiences with participants, the planner may have a significant amount of credibility or none at all. In the latter case, it may not be possible to establish the trust required.

This stage is primarily used to gather relevant information about the participants' perception of the conflict, their goals and expectations and the conflict situation. Laying the groundwork for continued communication is quite important in this stage. The mediator-planner must therefore be adept at communication and personality judgment.

Stage Two: Fact Finding and Isolation of Issues. This stage involves gathering and generating facts and

focusing on the fundamental issues at hand. Planners have always been particularly adept at this task. For mediation to be effective, it is extremely important that both sides in the dispute have equal access to the factual information and that both sides agree on what the facts are. Once agreement on the relevant facts is reached, then the task is to focus on the issues, not on personalities and positions.

Stage Three: Creation of Options and Alternatives. Here again, planners are trained to be problem-solvers and to search for the various options and alternatives. When mediating, however, the planner must be able to integrate the desires of the various parties into alternative solutions. The secret is to search for innovative solutions that result in mutual gains rather than a win or lose situation for either side.

Stage Four: Negotiation and Decision Making. Continuing cooperation of the participants is the major task in this stage. The participants must choose the option they feel they can live with. The planner acting as a mediator in this stage must have considerable patience and must not impose a solution on the participants. Excellent communication skills and perception of communication patterns is needed to ensure

that the focus continues to be on the solution to the problem and not on personality clashes.

Stage Five: Clarification and Writing a Plan. At this stage, writing skills become extremely important. A proposed plan for resolution of the dispute is written and reviewed by both sides until all matters are clarified and agreed upon. For the planner-mediator involved in a zoning dispute, the actual writing of the agreement may not be as important as ensuring that a legal framework for the agreement and implementation of the agreement exists within the local zoning regulations. This aspect of dispute resolution will be examined in greater detail in the following chapter.

Stage Six: Legal Review/Processing. This stage is not as applicable to the local level. Perhaps it is more necessary when the conflict being mediated must be connected to society at large, for example where the courts must review decisions in a divorce or custody settlement.

Stage Seven: Implementation, Review and Revision. This stage usually takes place outside the confines of the mediation setting and does not demand the active, continuous involvement of the mediator. In the case, however, of a planner acting as mediator, implementation is a normal concern and function and therefore the planner

is in a unique position to work on settlement as well as implementation. The local planner should also be involved in review and revision to ensure the presence of local zoning laws which can accomplish the desired and agreed upon ends.

Another paradigm for mediation in planning disputes is offered by Susskind and Weinstein (1980). They suggest a 9-step process somewhat different than Forester's:

Step 1: Identifying the Parties That Have a Stake in the Outcome of a Dispute

Planners have always been concerned with citizen participation in public decision-making processes. This first step is therefore basic and well-known to planners. In resolving disputes it is imperative that all parties that want to participate in a solution be identified. Susskind and Weinstein (1980) suggest that it is much better to include too many people or groups than too few. The variety of groups which could be interested in a zoning dispute include:

1) The developer,
2) Surrounding landowners,
3) Neighborhood organizations,
4) Elected officials,
5) Appointed boards or commissions,

6) Townships,

7) Other regulatory agencies, etc.

Susskind and Weinstein (1980) argue that it is not as important to focus on the number of parties involved as it is the categories of interests that want and ought to participate. For example, a local environmental organization may be interested in a particular rezoning issue. It is not necessary to have every member of the organization participate in the negotiation but it is important to have that interest represented. Identifying the range of interests that have something at stake is the crucial element. If that is done properly, it could result in a more manageable as well as effective process.

Step 2: Ensuring That Groups or Interests That Have a Stake in the Outcome are Appropriately Represented

Even though the various groups interested in an issue can be identified, it is very difficult to determine whether the representatives speaking for a group are in fact accurately and appropriately representing a group's interests. Planners must therefore make practical judgments about who represents affected parties and about how to interpret their concerns (Forester 1987).

Three strategies for identifying legitimate interest group representatives are:

1) reliance on networks of existing organizations;

2) ad hoc elections; and

3) reliance on capacity of administrators, regulators, or mediator to select representatives who have credibility with the larger groups involved (Susskind and Weinstein 1980).

Not all participation should be in the same degree or duration. Those most directly involved will want and should be involved from the beginning and should be kept involved in greater depth and frequency than those less concerned (Susskind and Weinstein 1980).

Step 3: Narrowing the Agenda and Confronting Fundamentally Different Values and Assumptions

This step is similar to Folberg's Stage Two: Fact Finding and Isolation of Issues. In any dispute situation there are obviously differences of opinion. Sometimes the differences can be quite varied and numerous, but are usually the result of one of two factors: 1) the differences are the result of faulty information or different interpretations of the facts in the case; or 2) the differences are the result of fundamental differences in values.

To illustrate, let us take the example of a developer proposing an industrial use next to a wetlands. An

environmental group may be opposed to the proposal simply because the group believes that the pollution and noise will be damaging to the wetlands. This disagreement may be entirely due to a dispute over the facts. If agreement can be reached on what the actual outputs from the industrial use will be, then there may be room for reaching a mutually satisfactory agreement. The planner can facilitate by encouraging free discussion in order to arrive at a consensus on the facts.

In the latter case, there may be agreement on the relevant facts, however, the disputing parties may totally disagree on a solution because of a fundamental difference in values. To use the previous example, the developer proposing an industrial zoning and use adjacent to a wetlands may feel that such a proposal would be a benefit to the community by providing jobs and tax base. On the other hand, the environmental group may feel, regardless of the effect on the wetlands, that such growth is not needed and simply an unnecessary threat to the environment.

In such cases, it may be impossible to arrive at agreement because the fundamental values are different. Agreement could mean one side compromising their fundamental values and such a solution may not be possible without litigation (Amy 1987). The planner-mediator must

be able to recognize when fundamental value differences are involved and when compromise does not seem likely.

Step 4: Generating a Sufficient Number of Alternatives or Options

Planners can facilitate this step by being creative in devising options that address concerns. The secret is to not dictate alternatives but to allow for sufficient dialogue for ideas and alternatives to surface on their own, giving the participants more of a feeling of ownership in the process.

Also, to be successful, every group involved in the dispute must be able to find an option it favors. This often means that included in the options must be a do-nothing or no-build alternative. This is important because it allows all points of disagreement to surface and helps every group feel there is a reason to continue negotiating. Because not all appropriate alternatives can be known early on, allowances must be made for inserting new ideas and alternatives at any point in the process (Susskind and Weinstein 1980).

Step 5: Agreeing on the Boundaries and Time Horizon for Analysis

Elaborating on the Folberg model, Susskind and Weinstein (1980) examine the importance of reaching agreement on boundaries and time horizons. From a general

environmental context, they argue that in order to agree on the costs and benefits of a proposal for Step 6, agreement must first be reached on the impact area to be considered and the length of time of any impacts.

To continue with the wetlands example, it may be impossible to proceed if the environmental group is looking at the costs and benefits of the industrial use over the long-term (i.e. future generations) or over a large impact area (e.g. the entire United States). The developer may be considering only the immediate impact area and a 20-year build-out time horizon. It is obvious that agreement on costs/benefits will be extremely difficult until some sort of compromise is reached on boundaries of the impact area and the time horizon used to analyze the impacts.

Step 6: Weighting, Scaling, and Amalgamating Judgments about Costs and Benefits

Here Susskind and Weinstein (1980) take a technical approach to dispute resolution. Arguing that environmental and land-use disputes contain a high degree of disputed facts, they urge what is termed "data mediation." It is impossible to reach complete agreement on the facts in any given situation, however, it is extremely important that at least the differences be

narrowed. Perhaps agreement can be reached on predicting potential impacts by using a range of extremes.

Planners can facilitate agreement by using a variety of technical approaches including everything from actual field surveys to sophisticated computer modeling. Data mediation itself can also take many forms. Two possible approaches are:

1) Press the disputing parties into sharing the information they intend to use to support their arguments. This kind of open dialogue will hopefully lead to a consensus on data to be used; and
2) Secure agreement from the disputing parties that any and all modeling or predictions be based upon a common and agreed upon data pool. Commonly accepted data sources like the U.S. Census Bureau, etc. would be examples (Susskind and Weinstein 1980).

Step 7: Determining Fair Compensation and Possible Compensatory Actions

The problem in this step is to determine what each participant is willing to trade. Perhaps some form of compensation will satisfy a group that impacts have been adequately mitigated. A good example at the local level may be the siting of a landfill or waste processing

facility. Currently, there is considerable discussion about financial or other compensation (e.g. trades of land, preferential actions on other matters, etc.) as a way of offsetting impacts of a use on surrounding property owners (Susskind and Weinstein 1980). The limits to such compensatory schemes are set only by our own imagination and ingenuity. Here again, the planner can play a significant role by pushing for fair and equitable solutions.

Step 8: Implementing the Bargains That are Made

Susskind and Weinstein (1980) stress that it is absolutely crucial that all parties involved in a negotiating process accept and understand the obstacles to actual implementation of an agreement. Sometimes compromises made in order to break a deadlock may not be possible to implement due to legal prohibitions or outside parties who refuse to cooperate. In local zoning disputes, therefore, it is much better if the planner, through local regulations, has the power and direct control to implement an agreement.

Step 9: Holding the Parties to Their Commitments

Building on the previous step, Susskind and Weinstein (1980) again emphasize the criticality of developing mechanisms that bind parties to the terms of their agreements. They suggest agreements which are either

self-enforcing or enforceable through legal means. Monitoring is also required to ensure that predicated/ prescribed outcomes do not exceed or drop below expected levels.

Here again, the planner has a unique opportunity. By being an ongoing part of the community, the planner can continue to monitor projects and ensure continued compliance.

Summary

In summary, it is important to note that in order for mediation to be an effective tool for the planner, it must be incorporated as a natural part of the decision-making process. This does not mean that every zoning decision has to involve mediation, but rather that mechanisms must be established that will not only allow for but encourage the use of mediation in certain situations. Susskind (1980) makes a case for resolving disputes through "ad hocracy." He sums it up like this:

> "We should be focusing our energies on the design of ad hoc arrangements in which key stakeholders jointly solve the problems facing them. We also ought to focus on the ways in which ad hoc arrangements can be embedded in institutional structures that accumulate what we learn and allow us to get better at conflict resolution. As long as we ignore the need to build case-specific dispute resolution capabilities and focus instead on the setting of general policy, we will merely increase the number and intensity of the disputes that must be resolved." (p. 4)

CHAPTER THREE

LEGAL FRAMEWORK FOR MEDIATION IN LOCAL ZONING DISPUTES

Introduction

Unlike most mediated dispute settlements, agreements to resolve disputes in zoning will likely be in the nature of public agreements using the legal framework of the local zoning laws, rather than in the form of private agreements between the disputing parties. It is therefore extremely important that a framework be in place that will allow for mediated settlements.

Unfortunately, traditional or conventional zoning, using a hierarchy and "laundry-list" of uses in segregated and exclusive zones, is not a framework which allows mediation to occur. Kendig (1980) explains this point:

> "Ad hoc decisions (using conventional zoning) cannot successfully protect all interests because decision makers are always required to choose between two conflicting interests: the neighbor who wants the neighboring property to remain vacant or to be developed to a use no higher than his, and the developer who wants a higher intensity use. One must win; the other must lose. In one situation the developer reaps a "windfall" return, and the neighbor does not receive protection. If the neighbor is protected, the developer suffers a "wipeout." The history of conventional zoning has been to restrict more narrowly the use of land, thereby forcing more ad hoc decisions and exacerbating this problem." (p. 11)

The main task then, for the planner desiring to allow for mediation in zoning, is to search for and establish flexible and innovative land development control techniques which depart from the win-lose scenario of conventional zoning. The emphasis should be on controls that allow for decisions which address concerns and provide for win-win (mutual gain) solutions. This chapter will explore, in summary fashion, some of the alternative legal frameworks.

Negotiated Development

More and more large-scale real estate development projects, especially those involving public-private partnerships, are being implemented under the generic term "negotiated development." Under this kind of framework almost anything is negotiable. As now practiced, negotiated development can cover a far wider spectrum of project components than zoning. It can also occur at several stages of the approval process up to the final granting of building permits (Rivkin 1977).

Several books outline case studies on negotiated development projects (Rivkin 1977; Sullivan 1984; Levitt & Kirlin 1985). Generally this type of development control is limited to large projects in metropolitan areas. It is beyond the capabilities of most localities to implement

and is much more complicated than necessary for many local development requests.

Contract zoning could be viewed as a form of negotiated development. With this type of zoning a governing body offers approval of a zoning request in exchange for certain concessions from the developer. The practice is expressly illegal in many states because of the potential abuse of the practice through political favoritism. It is very important, therefore, that the legal authority to undertake any kind of negotiated development be firmly in place before proceeding.

Planned Unit Development (PUD)

PUD zoning usually establishes a district which is more flexible than the conventional zoning regulations. Approval is dependent upon actual development conforming to an approved site development plan. The PUD could allow a mixture of land uses, higher densities with required open space, etc. (Rahenkamp 1977).

The advantages of a PUD in mediation is that it can be used to restrict allowable uses, to require landscape screenings or buffers from adjacent uses, to limit hours of operation, or to address many other concerns which the surrounding neighbors might have. The disadvantages are that a PUD involves a somewhat complicated process

requiring preliminary and final development plan approval. It is also often beyond the financial capabilities of individuals to prepare the detailed site plans necessary and, as with any flexible technique, the chance for abuse by reviewing boards and commissions is much higher than with traditional zoning.

A number of communities, however, are now attempting to correct many of these problems by creating streamlined "short PUDs" which combine preliminary and final development plan approval into a one step process (Reed 1988). They are also simplifying the requirements for approval and the amount of detailed information required to be submitted. This author has written a simplified set of PUD regulations included in Appendix A.

Conditional or Special Use

This technique is probably the most widely used for adding flexibility to zoning regulations (Hinds 1979). The method allows uses, which are specifically listed in the text of an ordinance, within a given zoning category only if certain specified conditions are met. These conditions can either be listed in the text in advance of a request or can be attached later on a case by case basis.

Obviously the less that is specified in the text, the greater the flexibility for mediating neighborhood concerns, but also the greater the possibility for abuse. Conditional or special use permitting can look like contract zoning and be just as illegal if not done properly. Hinds (1979) suggests the following four qualifications to ensure that the device is used in an orderly and aboveboard manner:

1. Uses that are permitted conditionally should be listed as such for everyone to see in the text of the ordinance.
2. Conditions should be clearly spelled out in the text.
3. There should be an established procedure to be followed, including a public hearing and owners of surrounding property should be notified as to exactly what is proposed.
4. Conditions added as an outcome of the public hearing should be clearly and rationally related to the peculiar conditions of the particular site and use.

Localities may vary widely in their use of this technique. Final approval of conditional or special uses may be either by the governing body or a non-elected board.

Hardin County, Kentucky, has one of the most unique development ordinances in the country. The ordinance makes maximum use of this technique. Essentially the entire county is one zone and everything in that zone is a conditional use. Any development request, therefore, must go through a three-stage process:

1. The development proposal is scored, based on the land's appropriateness for development, using an objective (as much as possible) point system. This first stage acts as the comprehensive plan, guiding development to those areas close to cities where utilties are available and away from prime agricultural land, etc.;
2. If the proposal makes it past this initial stage, a meeting is arranged between the developer and the surrounding property owners to work out and agree to appropriate conditions, if any;
3. The next step is on to the planning board and governing body for a final decision. If the neighborhood concerns have been worked out to everyone's satisfaction, that is what is adopted. If not, the final conditions must be negotiated and a decision made, with or without full agreement of all parties (Hardin County 1985).

This kind of process allows tremendous latitude for doing mediation in dispute situations. Its success, however, depends greatly on the objectivity of the initial step in order to keep the process from being influenced by power politics.

Conditional or special uses can be a very useful mediation technique, however, the disadvantage in most cases is that rezoning is still required. The Hardin County model eliminates that step but is probably not duplicatable in most locales, especially at the present time.

Impact or Performance Zoning

Impact or performance zoning is different from a PUD or conditional use in that the standards a particular development proposal is required to meet are not solely based on a specific site. Rather predetermined performance standards, usually based on a formula, must be met regardless of the use proposed or the site itself. The formula used to evaluate proposals is usually fixed, but the numbers can change under specified conditions.

In its most elemental form, this type of zoning would include performance standards such as: "No increase in storm water runoff from the site" or "25% common open space" (Rahenkamp 1977). In its more elaborate forms,

this technique can be quite complex. Measurements can include environmental, fiscal, and infrastructure (roads, sewer, water, etc.) impacts on a community. Performance standards for industrial uses could include maximums on noise decibels or air emissions beyond the property lines. Elaborate schemes can be devised for setting minimums and/or maximums for open space ratios, density, floor area ratios, impervious surface ratios, etc. (Kendig 1980). Finally, environmental impact statements and other kinds of impact studies could be included in this category as well.

The advantage of this technique is that it can provide an objective and consistent framework for evaluating and negotiating proposals within the limitations of the standards. The disadvantage may be that this technique can be somewhat less flexible than PUD or conditional use and that it may require technical expertise and measurement equipment which is beyond the resources of some local jurisdictions.

Floating and Overlay Zoning

A floating zone is not initially shown on a zoning map but can be theoretically applied to any property through an amendment process. A PUD can be viewed as a type of floating zone because it can be applied regardless

of the kinds of uses proposed. When applied, it is no longer considered floating with respect to the particular property (Hinds 1979).

When applied over another zoning district, the term overlay zone can be used. An overlay zone can be used to place additional restrictions or modify requirements on property, to limit uses, etc. A good example of this type is a floodplain overlay district. Although the underlying zoning may be residential, housing may be restricted due to a floodplain overlay which prevents or restricts this kind of development.

This technique can be quite useful in mediation as it can be used in a variety of situations. A down side could be that, as with some of the other techniques, each zone would be different in its requirements which could present an enforcement problem. However, all in all, this is a very useful technique which can be utilized to supplement and add flexibility to conventional zoning regulations.

Incentive or Bonus Zoning

In this scheme, specific public concessions are granted to a developer in exchange for matching private contributions. The formula for determining the tradeoffs is clearly and inflexibly written into the zoning ordinance. A typical example would be allowing a

developer to construct a taller building in exchange for the developer providing a public plaza (Rahenkamp 1977).

Examples of public benefits would be: dedicating parkland, preserving historic structures, constructing a library, providing beach access, redeveloping a depressed area, and providing lower cost housing. Examples of offsetting incentives would be: tax abatement, increase in density, street improvements, dollar subsidies, unit size changes and additional use types (Rahenkamp 1977).

As with negotiated development, incentive zoning tends to work well for larger scale development projects but not for smaller requests which cannot afford to pay for the public benefits. This technique is also somewhat inflexible in that the tradeoff formula is fixed. The method generally cannot be used for addressing neighborhood concerns outside of the public benefit categories specified in the ordinance.

CHAPTER FOUR

CASE STUDY - LOCAL ZONING DISPUTE

Introduction

This final chapter will examine a local zoning dispute in which the author was directly involved. The dispute eventually was litigated. The case study will look at how litigation could have possibly been avoided by the use of mediation techniques as discussed earlier.

Background

The dispute centered around the zoning and use of a parcel of land located in a relatively rural unincorporated area. The uses in the area were mixed including a residential subdivision, rangeland, scattered rural residential and a heavy equipment construction company and related quarry. Access to the property was via a paved county road approximately 1/4 mile from a major state highway.

In 1974, the owner of the approximately 100 acre tract in question, desired to begin a cardboard baling operation and activities related to his refuse collection business on the site. The owner also resided on the property.

Over strong opposition from the neighbors in the area, the governing body rezoned a 12 acre site, to the rear of the tract (see Figure 3), from agricultural to light industrial permitting the activity. However, covenants were also applied to the site by the owner which restricted the uses to a cardboard baling operation and maintenance of refuse hauling trucks. The owner also agreed to landscaping or screening of the operations.

Although the action could have been highly questionable as a contract zoning, the owner continued to operate without major complications until 1984. At that time, the owner became desirous of expanding his operations to include recycling of materials other than cardboard and paper. He also needed additional space for offices and vehicle maintenance. This necessitated rezoning additional land which precipitated the most recent dispute with the neighbors.

Zoning Techniques and Mediation

The first problem was that recycling centers as such were not listed specifically in the local zoning regulations. Initially, the owner was persuaded by the local planning staff to pursue a PUD (see Figure 3) which could allow a mixture of uses and provide a mechanism for addressing neighborhood concerns. Unfortunately, the

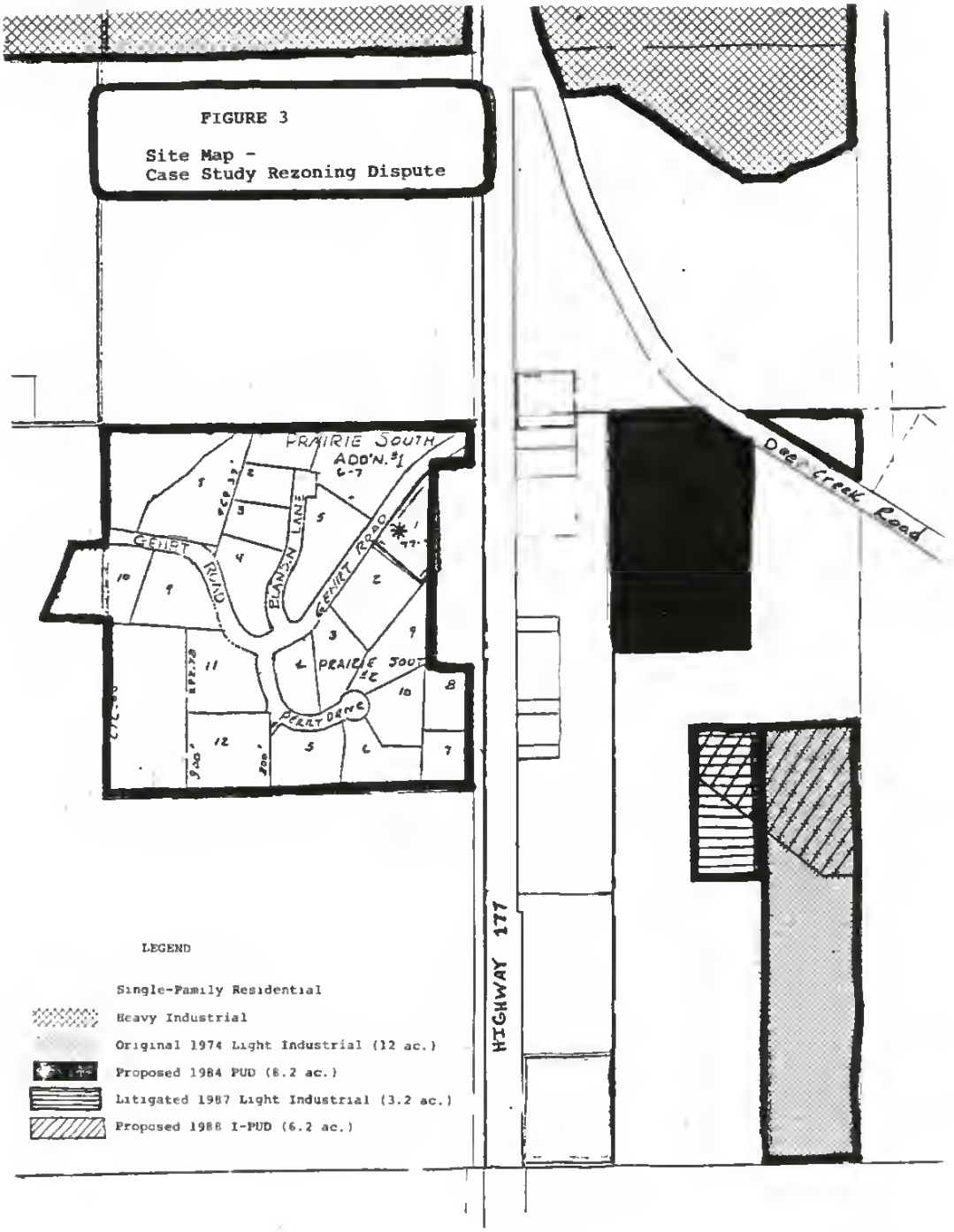


FIGURE 3
Site Map -
Case Study Rezoning Dispute
PRAIRIE SOUTH ADD'N. #1
L-7
GEHRT ROAD
BLANTON LANE
PERRY DRIVE
PRAIRIE SOUTH
Deer Creek Road
HIGHWAY 177
LEGEND
Single-Family Residential
Heavy Industrial
Original 1974 Light Industrial (12 ac.)
Proposed 1984 PUD (8.2 ac.)
Litigated 1987 Light Industrial (3.2 ac.)
Proposed 1988 I-PUD (6.2 ac.)

owner became frustrated with the neighborhood opposition and the complexity and expense of the PUD approach. The PUD application was abandoned entirely and a more obscure site adjoining the existing light industrial district was pursued for rezoning to light industrial without any covenants or restrictions.

With abandonment of the PUD, it then became necessary to make provision for recycling centers within one of the zoning districts in the regulations. Although this was a general amendment to the regulations and not specific to any particular property, the neighborhood opposed the amendment. Debate and negotiation at the public hearing resulted in collection centers and storage for recyclable materials being included as a conditional use in the light industrial district. The accompanying definition also included a precise list of recyclables allowed, limits on hours and types of operations, and limits on outdoor storage (see Appendix B). Although this conditional use approach could have been utilized to address a variety of neighborhood concerns, the shortcoming was that rezoning to light industrial, which permitted many uses, was still necessary before the conditional use could be pursued.

With the conditional use amendment in place, the owner submitted an application for rezoning three additional acres to light industrial to allow a

recyclables collection center and offices (see Figure 3). Neighborhood opposition to this rezoning eventually led to the litigation.

Neighborhood Concerns and Mediation

Throughout the process, staff attempted to listen to neighborhood concerns and to address them as best they could. However, without the PUD, there was no legal framework to address the neighbors' concerns regarding other uses, off-site impacts, screening, traffic entry, etc. The conditional use for the collection center could have been used to address concerns such as screening and traffic entry. However, the light industrial zone required as a prerequisite to the conditional use did not afford any legal mechanism for addressing concerns. The light industrial rezoning was therefore an all-or-nothing proposition.

Staff attempted to maintain communication between the disputing parties and to try and suggest alternatives, using somewhat of a shuttle diplomacy approach. Communication, however, was extremely difficult because of a long history of distrust and animosity between the disputing parties. Neither side was interested in any kind of compromise situation.

The governing body eventually approved the light industrial rezoning over a protest petition from the neighbors. The neighbors immediately filed suit claiming that the decision was arbitrary and capricious spot zoning and that it devalued their property.

Results of Litigation

The matter eventually went to trial approximately three years later. The County, including the author, was forced to take a rigid, adversarial position against the neighborhood in order to defend the suit. In the trial, the neighbors raised a number of concerns which were valid. For example:

1) The light industrial zone permitted a number of uses which could be detrimental to the area;
2) There was no assurance that screening or buffering would be maintained; and
3) There was no assurance that off-site impacts, e.g. traffic, noise, odor, dust, would be controlled so as to not detrimentally effect the neighborhood.

On the other side, the County argued that the site was so well isolated by distance and topography that these issues were not significant. Considerable time and money was spent on both sides arguing the rightness of their positions. Unfortunately, in the end the substantive

issue was not even decided but rather the rezoning was declared null and void due to an error in procedural due process.

The experience of this litigation further impressed upon the author the need for a legal framework which would allow for mediation. It also led to a more firm belief that a compromise solution was possible and that it would be much better for everyone concerned the litigation.

Post Litigation Efforts

In the wake of the litigation, the author began searching for flexible, yet practical, zoning techniques which could be used to allow for mediation in similar dispute situations. Conditional uses, performance zoning, and overlay zones were explored in depth. A problem, however, was convincing the legal counsel of the statuatory authority for and enforceability of some of the alternatives. Because of the familiarity with and statuatory authority for PUDs, it was eventually decided that simplifying the County's PUD regulations would be the best option (see Appendix A).

Once the changes were accomplished, the author eventually convinced the owner that it would be in his best interest to try to "negotiate" development with the neighbors by using an I-PUD. He then proceeded with a PUD

for a 6.2 acre site as shown in Figure 3. The preliminary development plan specified the uses that would be allowed and also outlined detailed restrictions concerning operations, inspections, etc.

Unfortunately, the neighborhood distrust and animosity was so firmly entrenched that no compromise was possible. The owner's legal representative did try to conduct a "negotiation" session with the neighbors but to no avail. The neighbors listened to the proposal, said "thanks for the information," and left.

After several months of hearings and postponements to allow for experts to study the issue, the Planning Board recommended denial of the request. In like manner the governing body unanimously voted to deny the PUD rezoning.

Staff attempts at mediation in this instance failed. The developer was left with nothing but disappointment and frustration. Nevertheless, the developer was appreciative of staff efforts to seek a compromise solution.

Case Study Observations and Conclusions

Mediation in this particular situation was probably not a realistic possibility for a number of reasons:

1) The history between the parties was such that emotions were controlling. The distrust, fear, and animosity between the two sides could not have

been overcome by simple efforts. If the author had had more training or experience in dealing with these situations, this could have been recognized and a different tact taken;

2) On the other hand, mediation was also not possible because of the absence of a legal framework to support it. When the framework finally became available, it was too late because the litigation by that time had firmly entrenched the opposition.
3) The author was unable to act as a mediator because of the perception of non-neutrality by the opposition. The only way this could have been avoided would have been to remain completely neutral from the very beginning and throughout the litigation. This would have been extremely difficult for a planner to do because of the expectation to provide recommendations on matters. One way to avoid this would be to institutionalize mediation as in the Hardin County Ky. model.

General Conclusions and Recommendations

In summary, the author would like to make the following general conclusions and recommendations for further study.

1) It is possible for planners to play mediating roles in local zoning disputes. However, it is not always possible or even desirable to do so. Some dispute situations may simply have to be litigated to be resolved. More study is needed to guide planners in deciding when a mediating role is desirable.

2) Most planners are woefully undertrained to deal with conflict situations. Planning schools should emphasize conflict resolution skills and techniques in their curriculums. Further study is needed into the precise role of the planner and the special skills required by the planning profession. Planners should give special attention to studies relating directly to the planning profession such as Susskind and Weinstein (1980) and those dealing with the field of environmental mediation in general such as Amy (1987).

3) Mediation will not occur if there is not a legal mechanism available at the local level to do so. Planners need to look to more flexible zoning techniques which will allow mediation to occur within the context of sound planning. A closer examination needs to be made into how mediation

between disputing parties can be "institutionalized" into the citizen hearing process and into the planner's role.

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Appendix A

APPENDIX A

SECTION 10 - PLANNED UNIT DEVELOPMENT DISTRICTS REGULATIONS

PURPOSE AND OBJECTIVES

The following regulations adopted in accordance with K.S.A. 12-725 through 12-733, shall apply to land use and structures within a Planned Unit Development district which, when reviewed by the Planning Board and approved by the Board of County Commissioners, may differ in one or more respects from the regulations that are applicable in any of the other zoning districts, except Floodplain Districts, established herein. The objectives of a Planned Unit Development district shall be to promote progressive and flexible land development in order to achieve:

1. A maximum choice of living environments by allowing a variety of housing and building types or permitting an increased density per acre and a reduction in lot dimensions, yards, building setbacks and area requirements.

2. A more useful pattern of open space and recreation and more convenience in the location of accessory commercial uses and services.

3. A development pattern which preserves and utilizes natural topography and geologic features, scenic vistas, important wildlife habitats, trees and other vegetation, other natural resources, and prevents the disruption of natural drainage patterns.

4. A more efficient use of land and the provision of services.

5. A development pattern in harmony with land use density, neighborhood character, transportation facilities, community facilities, and economic development potentials.

6. An environment which provides safe, clean, convenient and necessary residential, commercial, and industrial facilities, which will afford greater opportunities for better housing, recreation, shops and industrial plants for all citizens of Riley County.

STANDARDS AND CRITERIA

Established standards and criteria herein shall be used by the Planning Board and Board of County Commissioners in the determination of the approval or disapproval of preliminary proposals for planned unit development districts. A development plan which is judged to be consistent with these standards and criteria, or is revised as provided herein, shall be considered to be qualified for preliminary approval.

All planned unit development districts shall be consistent with the following requirements, policies and considerations:

1. The application for a planned unit development district shall be filed by the owner, or jointly by the owners of record of all land to be occupied by that district.

2. The planned unit development district shall be in general conformity with the Comprehensive Plan.

3. The planned unit development district will not have a substantially adverse effect on the development of the neighboring area.

4. The planned unit development provides benefits and amenities that warrant any modification of the zoning regulations that would otherwise apply to the area.

5. The planned unit development provides design features and benefits that warrant any proposed modification of existing standards relating to public improvements, easements, rights-of-way and service utilities.

6. The proposed development plan contains proposed covenants, easements and other provisions relating to the size, location and density of residential buildings, non-residential uses and structures and public facilities as are necessary for the protection and welfare of the area.

7. The planned unit development provides for the location and arrangement of structures and other improvements such as parking areas, lighting, landscaping, etc. which are compatible with the surrounding land use.

8. The planned unit development proposal provides a time schedule for the completion of the development as a whole, or in stages, which is consistent with the evidence presented with the proposal as to the financial and physical resources of the developer.

9. The proposed development plan contains provisions for the formation of an agency to own and maintain common use lands and facilities within the district.

PLANNED UNIT DEVELOPMENT DISTRICTS

The following Planned Unit Development districts are hereby established:

1. Residential Planned Unit Development (R-PUD)
2. Commercial Planned Unit Development (C-PUD)
3. Agri-Business Planned Unit Development (A-PUD)
4. Industrial Planned Unit Development (I-PUD)

USE LIMITATIONS

All zones:

e. Common open space and other common use facilities shall be consistent with the planned function and located within the district so as to be convenient, readily accessible and visually attractive to all of the intended common users.

b. Provisions for the continuity, preservation, care, conservation and maintenance of all common open space and common use facilities shall be provided in the development plan in accordance with requirements within this Section 10.

c. Common use recreational facilities such as playgrounds and swimming pools shall be of such size to adequately serve the population for which they are intended. Such adequacy shall be determined in accordance with some recognized national standard which shall be referred to within the development plan.

d. Off-street parking and loading areas shall be provided for all uses within the district in accordance with the requirements of Section 14 of these regulations.

e. The development time schedule shall include provisions for:

Completion of streets, drives, walks and minimum parking and loading facilities coincident with the completion of structures requiring such facilities.

Completion of the landscaping and planting of common use and private areas coincident with the completion of structures adjacent to those areas.

Completion of common use recreational facilities, of at least 80% of their required proportional amount, coincident with the completion of residential structures creating the need for such facilities.

The completion of at least 30% of the residential structures to be served by a business use before such business begins operations.

f. A development plan may provide for completion of facilities in stages, and in such case, the plan shall specifically state areas included in and the time schedule for such stages.

g. When a non-residential district abuts an existing residential use or an area zoned for residential use, screening shall be provided to insure year-round privacy to the residential use and greater setback requirements shall be considered.

PERMITTED USES

R-PUD:

a. Attached, detached, grouped, single story, multi-story, single-family or multiple family dwellings or any combination thereof.

b. Accessory buildings and uses.

c. Religious, cultural, recreational and business uses which are designed and planned to serve the residents within the district.

C-PUD:

a. Any use permitted in any Commercial or Industrial District as stated in Section 6 and 7 of these regulations. The C-PUD shall be used when over 50% of the building area is to be for commercial uses.

b. Accessory buildings and uses.

A-PUD:

a. Any land use that sells, processes, stores, services or fabricates goods or products to or from the agricultural community including extraction of natural materials.

b. Accessory buildings and uses.

I-PUD:

a. Any use permitted in any Commercial or Industrial District as stated in Sections 6 and 7 of these regulations. The I-PUD shall be used when over 50% of the building area is to be for industrial uses.

b. Accessory buildings and uses.

DENSITY REQUIREMENTS

Minimum Area for PUD zoning

All Zones: 1/2 acre

Minimum Lot areas

All Zones: No minimum lot area except that the development shall meet all requirements of the sanitary code.

Maximum Lot Coverage:

All Zones: The ground area occupied by structures for principal uses and accessory uses for all zones shall not exceed 50% of the total ground area.

SETBACK REQUIREMENTS

All Zones: Minimum distance from any structure to the district boundary line shall be 25 feet when the boundary abuts a public street and ten (10) feet otherwise. Any parcel abutting a major or minor trafficway shall be subject to the setback requirements specified in Section 16.

PROCEDURE FOR PLANNED UNIT DEVELOPMENT DISTRICTS

1. PRELIMINARY DEVELOPMENT PLAN:

a. A landowner seeking the establishment of any Planned Unit Development District shall submit to the Planning Board and Board of County Commissioners a Preliminary Development Plan. The application for approval of the Preliminary Development Plan shall also constitute the filing of an application for the establishment of a Planned Unit Development District in the same manner as prescribed herein for the establishment of any zoning district. The Board of County Commissioners is hereby designated as the local administrative authority which shall exercise the powers granted by statute. 3 copies of the Preliminary Development Plan shall be submitted to the Planning Board at least 10 days prior to the hearing.

b. The Preliminary Development Plan shall include the following:

(1) A general vicinity map showing the location of the site.

(2) A site plan showing:

(a) The boundaries, dimensions and size of the site at an appropriate scale clearly indicated on the plan;

(b) An accurate and verifiable written legal description of the property;

(c) Clearly indicated directional arrows;

(d) The present and proposed topography of the area by contour lines at an appropriate interval;

(e) The use, approximate size and location of all existing and proposed structures;

(f) Prominent topographic features and drainage courses;

(g) The proposed flow of storm drainage from the site by use of directional arrows;

(h) The location, size and ownership of any lots, easements or rights-of-way for public streets and utilities, common open spaces and facilities, parking areas, drives and streets;

(i) The location and size of any sanitary sewer or stormwater drainage systems;

(j) The location and size of any existing or proposed signage or landscaping.

(k) Any portions of the site located in a designated or calculated 100-year floodplain.

(3) A complete and specific list of all uses to be permitted within the district. Uses not specifically listed on the plan shall not be permitted except by amendment of the plan.

(4) Sketches of and preliminary calculations for the sizing of any common use facilities, sanitary sewers or stormwater drainage systems.

(5) A statement of the nature of the landowner's interest in the land to be developed in sufficient detail to determine whether the applicant has sufficient control over the tract to effectuate the proposed plan.

(6) In the case where a Planned Unit Development calls for construction in units over a period of years, a schedule showing the proposed time and sequence within which the applications for final approval of all sections of the Planned Unit Development are intended to be filed shall be submitted. A written statement by the applicant shall also be submitted setting forth the reasons why, in his opinion, a Planned Unit Development would be in the public interest and would be consistent with the stated objectives of the County with regard to Planned Unit Development districts.

(7) The Preliminary Development Plan shall also include a statement as to the form of agency proposed to own and maintain the common use open spaces and facilities, streets and parking areas shown as a part of the plan. The statement shall further include the acknowledgement of and agreement to the following conditions which shall be put into effect concerning common use open spaces and facilities.

The agency owning and maintaining the common lands and facilities shall not be dissolved or permitted to dispose of any of the common lands and facilities without first offering to dedicate the same to the County or some other government agency.

The agency owning and maintaining the common lands and facilities shall provide care and management to prevent the loss of taxable value and avoid the creation of a public nuisance within the district. In the event of failure of that agency to fulfill its duties, the County shall have the right to serve notice on the agency demanding that specified deficiencies be remedied within a specified time limit and upon failure of the agency to act upon the matters as specified, the County shall have the right to enter upon the property and repair the specified deficiencies; the cost of same being assessed against the properties within the district and becoming a tax lien on those properties.

(10) The Preliminary Development Plan shall clearly define areas proposed to be restricted as to the use of land, buildings and structures and shall include a statement of substance of covenants proposed for such restrictions. The statement shall define the provisions of the plan which will be included in covenants running in favor of residents and owners within the district.

(11) The Preliminary Development Plan shall clearly define areas proposed to be dedicated for public use and subdivision lines proposed to be platted. When platting is required, the Preliminary Development Plan shall be submitted together or combined with a preliminary or short form plat in accordance with the subdivision regulations.

c. The Preliminary Development Plan may include the following:

(1) A description, rendering or drawing of the general characteristics of the proposed buildings may be submitted if the applicant desires. When submitted, it shall become a part of the Preliminary Development Plan.

2. ACTION BY THE COUNTY:

a. The Planning Board, upon receipt of the application for the establishment of a Planned Unit Development District, shall review the preliminary development plan with respect to the applicable standards and criteria herein and shall conduct a public hearing and further considerations and deliberations in the manner prescribed in Section 22 herein for the establishment of any zoning district. The Planning Board shall report its finding to the Board of County Commissioners and shall recommend that the application be approved or denied, or accepted with stated qualifications, amendments or conditions.

b. The Board of County Commissioners shall consider and act upon the application in the manner prescribed in Section 22 herein for the establishment of any zoning district. The Commissioners may approve or deny the application or may tentatively approve the application with modifications or conditions subject to the acceptance of such modifications or conditions by the owner. In the latter case the owner shall be notified of the nature of the modifications or conditions and the owner may then accept same and change the preliminary development plan accordingly; or the owner may reject same and the application shall be denied by the Commissioners. In the case of approval of the application by the Commissioners, a resolution shall be passed establishing a planned unit development district; including a finding that the planned unit development is in general conformity with the comprehensive plan and will not have a substantially adverse effect on the development of the neighboring area.

3. ACTION BY THE OWNER:

a. Upon approval of the application and the establishment of the planned unit development district by the Board of County Commissioners, the owner shall, within seven days after notification of such approval, file a statement with the County Register of Deeds containing all of the following:

The legal description of the Planned Unit Development District.

A statement that the Planned Unit Development District has been established and that the preliminary development plan is on file with the County Zoning Officer.

A statement specifying the nature of the plan, the proposed density or intensity of land uses, and the uses permitted and other pertinent information sufficient to notify any prospective purchasers or users of the land of the existence of such a plan and binding successors and assigns to the plan.

4. FINAL DEVELOPMENT PLAN:

a. Before the issuance of a building permit, the recording of a plat, or any development commences, the owner shall submit to the Board of County Commissioners a final development plan. Such plan may be for all or a part of the Planned Unit Development District and shall include all of the following:

(1) A detailed site plan showing the layout and design of all physical improvements as they will be constructed.

(2) A final plat, if required.

(3) Detailed landscaping plans, if applicable.

(4) Copies of easements and covenants.

(5) Proof of establishment of an agency for the management and maintenance of common use lands and facilities and copies of applicable by-laws or other regulations.

(6) Proof of ownership of the district and proof that no land within the district has been leased or conveyed prior to the recording of any restrictive covenants applicable to the area.

(7) Any other documents or statements which may be necessary to provide and prove compliance with any requirement or condition of the approved preliminary development plan.

b. The Board of County Commissioners shall review the final development plan for conformity to any and all parts of the approved preliminary development plan. The final plan shall be deemed to be in substantial compliance with the preliminary plan if the final plan does not:

(1) Vary the proposed gross residential density or intensity of use by more than 5% or involve a reduction in the area set aside for common open space, nor the substantial relocation of such; nor

(2) Increase by more than 10% the floor area proposed for non-residential use; nor

(3) Increase by more than 5% the total ground area covered by buildings nor involve a substantial change in the heights of buildings.

c. The Board of County Commissioners is not required to hold a public hearing in the process of evaluating final development plans which contain variances from the approved preliminary plan provided that the final plan meets the above standards for substantial compliance and/or the variances are concerned with the location and design of streets, drainageways and utilities. However, the Board of County Commissioners may require the owner to show good cause for any variations contained in the final plan and if, in the Board's opinion, the variations are not in the public interest, the Board may require the owner to make satisfactory revisions to the final plan as a condition for the granting of approval.

d. The final development plan, which contains no variations from the approved preliminary development plan or is in substantial compliance with the preliminary plan and variations contained therein are satisfactory to the Board of County Commissioners, shall be approved by the Board of County Commissioners within 45 days of the submitting of the final development plan.

e. A final development plan which is not in substantial compliance with the preliminary development plan or contains variances which are judged by the Board of County Commissioners to be not in the public interest, shall not be approved by the Board of County Commissioners and the owner shall be requested to meet with the Board to discuss remedies for the variances therein. If the owner does not agree to the remedies suggested by the Board of County Commissioners or otherwise declines to revise the plan as submitted, the Board of County Commissioners may, within 45 days of the original submission of the final development plan, deny approval of the plan and return it to the owner with a written statement setting forth the reasons why one or more variances are not in the public interest.

f. Following the denial of a final development plan by the Board of County Commissioners, the owner may choose to revise the plan in accordance with the recommendations of the Board of County Commissioners and resubmit it for approval or may, within 45 days of receipt of notice of denial, choose to appeal the decision of the Board of County Commissioners to the District Court.

g. A final development plan which has received approval by the Board of County Commissioners shall be so certified by the County Register of Deeds immediately following the satisfying of all conditions precedent and conditioned upon such approval.

h. After approval of a final development plan, the owner shall forthwith record all covenants, easements, rights-of-way, plat, by-laws or regulations pertaining to a management and maintenance agency, or any other documents that are a part of the final development plan. Following completion of all requirements of the final development plan, the owner may apply for and the Zoning Officer shall issue building permits; provided that all parts of the application for such permit is in full accord with the final development plan.

5. ABANDONMENT OR FAILURE TO PROCEED:

a. If the owner chooses to abandon an approved preliminary development plan or an approved final development plan, he shall so notify the Planning Board and Board of County Commissioners in writing. Upon receipt of such notice of abandonment by the owner, the Planning Board shall forthwith undertake proceedings to rezone the planned unit development area back to the zoning district classification which existed just prior to the application for Planned Unit Development District. The owner may, however, include with his letter stating the abandonment of the planned unit development, an application for a rezoning to some other zoning district classification and the Planning Board shall forthwith proceed to consider that application in the same manner as for any application for rezoning.

b. If the owner fails to submit a final developent plan to the Board of County Commissioners within 1 year of the approval date of the preliminary development plan; or if he fails to substantially commence the construction contained in the final development plan within 18 months of the approval date of the final development plan; and he has not applied for an extension to the above time limits from the Board of County Commissioners, the Board of County Commissioners shall revoke its approval of the preliminary plan or final plan and shall so notify the owner in writing. If within 30 days of receipt of the notice of such revocation, the owner does not present to the Board of County Commissioners an application for reinstatement of the preliminary development plan or final development plan, the Board of County Commissioners shall consider that the plan has been abandoned by the owner and proceed with the action prescribed in paragraph a. above.

Appendix B

APPENDIX B

COLLECTION CENTERS AND STORAGE FOR RECYCLABLE MATERIALS: Facilities for the public or private collection, indoor storage, separation, sorting and processing necessary for shipment of recyclable materials including and limited to the following:

- Aluminum, bi-metal and plastic containers of 6 gallon capacity or less.
- Paper and glass products.

Collection centers and storage for recyclable materials shall not include the processing, recycling or remanufacture of recyclable materials into new products for resale nor shall it in any way include the salvaging or recovery of materials from refuse. No materials shall be collected which are hazardous in nature or which have contained hazardous materials as defined by Kansas Statute. Processing for shipment shall include only those operations which meet the use limitations of the zoning district. All activities and storage shall be wholly inside of a building, or buildings. Hours of operation shall be restricted to daylight hours only.

THE ROLE OF THE PLANNER AS A MEDIATOR IN RESOLVING LOCAL ZONING DISPUTES: A CASE STUDY AND OVERVIEW OF POSSIBLE APPLICATIONS

by

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B.A., Bethel College, 1981

AN ABSTRACT

submitted in partial fulfillment of the

requirements for the degree

MASTER OF REGIONAL AND COMMUNITY PLANNING

Department of Regional and Community Planning

College of Architecture and Design

KANSAS STATE UNIVERSITY
Manhattan, Kansas

1989

ABSTRACT

The Role of the Planner As a Mediator in Resolving Local Zoning Disputes: A Case Study and Overview of Possible Applications

Conflict is an everpresent and inevitable part of our world. The potential for conflict exists at all levels of human relations and touches every facet of our everyday lives. When a conflict between two or more parties becomes visibly manifest, it is termed a dispute.

Disputes may be settled by violence or threat of violence, litigation, negotiation or arbitration. Because of the threat of violence or costly litigation to resolve a dispute, conflict in our society has come to be viewed negatively as something to be avoided or eliminated. However, conflict itself is neither good nor bad, but an inevitability which simply must be managed.

The planning profession potentially involves numerous conflict and dispute situations concerning the zoning and use of land. This offers the practicing planner the opportunity and challenge to play the role of mediator in resolving such disputes. Mediation is simply intervention in a dispute by a neutral third party. This intervention can range from highly active to passive which offers the planner a variety of mediating roles.

This study examined these types of mediating roles and how they could be applied to zoning dispute

situations. The types of skills and abilities necessary to do mediation were also studied. In most cases planners are not trained to act in a mediator capacity, however mediation, when used appropriately, has the potential for making a better planning process.

In order for planners to act in such a mediator capacity, it is also necessary to have the legal framework in place to allow for negotiation and compromise in zoning disputes. Various zoning techniques were analyzed and compared as to their appoicability to daily zoning administration and their desirability for mediation.

A case study of a litigated zoning dispute was used to analyze the practical application of mediation in the planning profession. The report concluded that a mediation role in planning is practical and desirable in certain dispute situations although more planners must be given training in the skills and techniques required to truly be effective. It also concluded that mediation is not always practical or possible and in some instances may not even be desirable. But again, more study and training is required to know when mediation is an appropriate role for the planner.